

CASE NO. PD-0748-17

**IN THE
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS**

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**KELSEY JO LACKEY,
Appellant**

VS.

**THE STATE OF TEXAS,
Appellee**

**FROM THE TENTH COURT OF APPEALS
IN CASE NO. 10-17-00016-CR**

STATE'S BRIEF

**JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS**

**Douglas Howell, III
Assistant District Attorney
State Bar Number 10098100
300 E. 26th Street, Suite 310
Bryan, Texas 77803
(979) 361-4320
Fax: (979) 361-4368
dhowell@brazoscountytexas.gov**

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

APPELLANT:	Kelsey Jo Lackey
Trial Counsel:	Craig Greening 409 East 26 th Street Bryan, Texas 77803
Appellant Counsel:	Chad Van Brunt 310 South St. Mary's Street, #1840 San Antonio, Texas 78205
	E. Alan Bennett 510 N. Valley Mills Drive, Suite 500 Waco, Texas 76710
THE STATE OF TEXAS:	Jarvis Parsons District Attorney 300 E. 26th Street, Suite 310 Bryan, Texas 77803
Trial Counsel:	John Brick Assistant District Attorney
Appellate Counsel:	Douglas Howell, III Assistant District Attorney
TRIAL COURT:	Hon. Travis Bryan, III Presiding Judge 272 nd District Court

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL	i
TABLE OF CONTENTS.....	ii
INDEX OF AUTHORITIES.....	iii
STATEMENT REGARDING ORAL ARGUMENT	1
STATEMENT OF THE CASE.....	1
STATEMENT OF PROCEDURAL HISTORY.....	2
SUMMARY OF THE ARGUMENT	7
STATE’S RESPONSE TO APPELLANT’S ISSUE	7
<p>The boilerplate waivers of appeal were properly enforced by the trial court, where the State asserted at sentencing that said waivers should block Appellant’s appeal.</p>	
PRAYER.....	13
CERTIFICATE OF SERVICE	13
CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4.....	13

INDEX OF AUTHORITIES

STATUTES

Tex. Code Crim. Proc. art. 1.14(a).....10

CASES

Alzarka v. State, 90 S.W.3d 321 (Tex. Crim. App. 2002)8, 12

Booth v. State, 499 S.W.2d 129 (Tex. Crim. App. 1973)3

Ex parte De Leon, 400 S.W.3d 83 (Tex. Crim. App. 2013)7, 12

Ex parte Delaney, 207 S.W.3d 794 (Tex. Crim. App. 2006)10

Marsh v. State, 444 S.W.3d 654 (Tex. Crim. App. 2014)11

Monreal v. State, 99 S.W.3d 615 (Tex. Crim. App. 2003).....10

Thomas v. State, 408 S.W.3d 877 (Tex. Crim. App. 2013).....9, 10, 12

Torres v. State, 493 S.W.3d 213 (Tex. App.—San Antonio 2016, no pet.)6

Willis v. State, 121 S.W.3d 400 (Tex. Crim. App. 2003)9, 10, 11

RULES

Tex. R. App. P. 25.2(a)(2)(A).....11

Tex. R. App. P. 25.2(d).....2, 12

Tex. R. App. P. 25.2(f).....6

Tex. R. App. P. 38.1(i)3, 7

Appendix

Defendant’s Plea of Guilty, Waiver, Stipulation and Judicial Confession. (CR 129-136).

CASE NO. PD-0748-17

IN THE
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

KELSEY JO LACKEY,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

STATE'S BRIEF

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, the State of Texas, by and through its District Attorney, and files this brief in response to the issue presented by Appellant.

STATEMENT REGARDING ORAL ARGUMENT

The State requests oral argument only if granted to Appellant.

STATEMENT OF THE CASE

Appellant was indicted for two counts of Theft more than \$200,000 on December 18, 2014. (CR 6). In count one, Appellant pled guilty to the lesser offense of Theft more than \$100,000 but less than \$200,000 and agreed to a sentence of three years IDTDCJ. (CR 127: count one). In count two, Appellant

pled guilty to the lesser offense of Theft more than \$100,000 but less than \$200,000 and agreed to a probated sentence of ten years and payment of \$350,000 restitution as a condition of probation, with \$50,000 due at sentencing. (CR 128: count two). The trial court accepted the plea agreements in both counts and sentenced Appellant pursuant to the terms of their respective plea bargain agreements. (CR 120: count two; CR 137: count one). Appellant filed notice of appeal on January 6, 2017. (CR 125).

STATEMENT OF PROCEDURAL HISTORY

On March 20, 2017, a majority of the Tenth Court of Appeals dismissed the appeal for want of jurisdiction, based on the trial court's amended *Trial Court's Certification of Defendant's Right of Appeal*, which certified that Appellant had waived his right to appeal. TEX. R. APP. P. 25.2(d). On June 13, 2017, the court of appeals denied Appellant's motion for rehearing after requiring a response from the State. (*See Clerk's Record*). Appellant's *Corrected* Petition for Discretionary Review was granted on November 1, 2017. Appellant's brief was filed on December 4, 2017. The State's first motion for extension of time to file the State's Brief was granted until January 18, 2018. The State has filed its second motion for extension of time to file the State's Brief until January 19, 2018.

STATEMENT OF FACTS¹

On August 22, 2016, Appellant and counsel signed the *Plea Agreement and Order* (CR 127, 128) and the *Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession*² (CR 129-132: count two; CR 133-136: count one) for both counts one and two. A review of the signed *Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession* forms show that Appellant expressly waived his right to appeal. Specifically, in the *Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession*, Appellant averred that:

I do further admit and judicially confess that I unlawfully committed the acts alleged in the indictment/information in this cause at the time and place and in the manner alleged, *or as a lesser included offense of the offense charged in the indictment/information*, and that such allegations are true and correct, and that I am in fact GUILTY of the offense alleged *or as a lesser included offense*.

I voluntarily enter my plea of GUILTY to said offense, and my plea is not influenced by any considerations of fear or any persuasion or any promises of any kind. In making my plea of guilty, I am not relying on any agreement not made known to the Judge at this time. I am pleading guilty because I am guilty and for no other reason.

1 The State's recitation is limited to the record filed with the Clerk of the Court of Criminal Appeals as available on Attorney Portal. The State notes it previously objected in its response to Appellant's petition for discretionary review to any citation to records, or appendices of records to Appellant's brief, outside of what has been filed with the Clerk of the Court of Criminal Appeals. TEX. R. APP. P. 38.1(i); *see Booth v. State*, 499 S.W.2d 129, 135 (Tex. Crim. App. 1973) (explaining that appellate court is not authorized to consider documents attached to an appellate brief which are not part of the record).

2 Signed *Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession* forms attached as an appendix to this brief.

I further understand that if I am convicted I have the right to pursue a motion for new trial and appeal to the appropriate Court of Appeals of Texas, and the right to be represented on appeal by an attorney of my choice or if I am too poor to pay for such attorney or the record on appeal, the Judge will, without expense to me, provide an attorney and a proper record for such motion for new trial and appeal. **However, it is my desire to waive my right to *pursue a motion for new trial* and to appeal, and I hereby voluntarily, knowingly and intelligently waive those rights in the event that the Judge accepts the plea bargain agreement. I understand that if the Judge accepts the plea bargain agreement, I may appeal only with permission of the court.**

I further understand that the State of Texas intends to destroy, and will destroy, any and all evidence in this case that is in the possession of the State of Texas, any clerk, law enforcement agency, or any other person or entity possessing said evidence. *I understand that destruction of such evidence will prevent any future request for additional testing or the presentation of new evidence or defenses or a claim of innocence based on such evidence. I hereby waive my right to request additional testing or present new evidence or defenses or a claim of innocence based on such evidence and consent to the destruction of any evidence seized in connection with my arrest and prosecution in this cause.*

Defendant's waiver/consent: KL; Defense Attorney's waiver/consent: CG^[3]
(CR 131-132: count two; CR 135-136: count one) (emphasis added).

Also on August 22, 2016, the trial court acknowledged, on the plea agreements, that he accepted the plea agreements and ordered that any evidence possessed may be returned or destroyed. (CR 127, 128).

3 Appellant's and Trial Counsel's initials, in both documents, are evidence that they reviewed the paperwork and knew what rights Appellant was waiving; this would rebut any argument that the failure to strike though the waiver of appeal language was merely an oversight due to the waiver "being buried in boilerplate language." (Appellant's brief, p. 28).

On December 19, 2016, the following docket entry was made: “Def and attorney appeared; plea agreement revised; Def pleaded guilty on Count Two (probation); reset for sentencing on Count One to 1/6/2017; Def signed for copy of notice[.]” (CR 150). Also on December 19th, the trial court accepted Appellant’s plea of guilty in count two and found that:

...the defendant understands the consequences of *waiving his right to pursue a motion for new trial* and appeal and that he/she has voluntarily, knowingly and intelligently waived those rights in the event that the Court accepts the plea bargain agreement. The Court therefore finds such plea of guilty, waivers and consent to be voluntarily, knowingly and intelligently made, and the Court accepts the plea of guilty....
(CR 132).

On January 6, 2017, the trial court accepted Appellant’s plea of guilty in count one and found that:

...the defendant understands the consequences of *waiving his right to pursue a motion for new trial* and appeal and that he/she has voluntarily, knowingly and intelligently waived those rights in the event that the Court accepts the plea bargain agreement. The Court therefore finds such plea of guilty, waivers and consent to be voluntarily, knowingly and intelligently made, and the Court accepts the plea of guilty....
(CR 136).

Also on January 6, 2017 at 9:33 a.m., Trial Counsel (Craig Greening) filed his *Motion to Return Property* that belonged to Appellant, stating that “[t]he case has been resolved and KELSEY LACKEY respectfully requests he be allowed to retrieve the items listed above from law enforcement officials. The Assistant

District Attorney of Brazos County does not object.” (CR 138) (emphasis added).⁴ Said order to return property was signed by the trial court. (CR 139). Thereafter on January 6, 2017 at 10:00 a.m., Appellate Counsel (Chad Van Brunt) filed his *Motion for Reasonable Bail Pending Appeal*. (CR 140, 143). Same day at 11:32 a.m., Appellate Counsel also filed his *Amended Notice of Appeal*. (CR 125).

On January 30, 2017, the trial court amended its *Trial Court’s Certification of Defendant’s Right of Appeal*, certifying that:

this criminal case is a plea bargain case and matters were raised by written motion filed and ruled on before trial but those matters were waived at the plea hearing & permission to appeal, though not appropriate, was denied. See State’s Ex No 1^[5] at plea hearing. *TBB* III 1-30-17.
(CR 149).⁶

As to Appellant’s statement of facts contained in his brief, the State objects to citations to a clerk’s record that does not comport with the one filed with the Clerk of this Court and available on Attorney Portal. Here, the Clerk’s Record

4 Trial Counsel’s assertion that the case had been resolved and wanted Appellant’s property returned would also rebut any argument that Appellant did not intend to waive appeal. The fact that the trial prosecutor was willing to return potential evidence would also support the prosecutor’s assertion that the negotiated plea did not include an appeal.

5 State’s Exhibit 1 at the plea hearing is the *Defendant’s Plea of Guilty, Waiver, Stipulation and Judicial Confession*. (See CR 129, 133: bottom right corner “State’s Exhibit 1.”).

6 Per the plain language of Tex. R. App. P. 25.2 (f), the trial court was permitted to amend certification of right to appeal at any time before filing of appellate brief. *See Torres v. State*, 493 S.W.3d 213, 217 (Tex. App.—San Antonio 2016, no pet.). Appellant did not file a motion to strike the amended certification as expressly allowed by Tex. R. App. P. 25.2(f) (“The amended ... certification is subject to being struck for cause on the motion of any party affected by the amended ... certification.”).

available on Attorney Portal is numbered to page 155. Yet, Appellant's statement of facts (pp. 1-8) cites to pages in a clerk's record beyond page 155. Consequently, Appellant's citations to the Clerk's Record for this case and are either not correct or are outside the record. TEX. R. APP. P. 38.1(i).

SUMMARY OF THE ARGUMENT

Appellant argues that his boilerplate waivers of appeal should not be enforced. However, the State objected to Appellant's assertion of appeal at the time of sentencing and held Appellant to the pre-printed waivers of appeal in the signed *Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession* form. Thus, Appellant knowingly, intelligently, and voluntarily waived appeal as part of a negotiated plea bargain agreement, and the trial court properly certified that Appellant had validly waived his right to appeal.

STATE'S RESPONSE TO APPELLANT'S ISSUE

The boilerplate waivers of appeal were properly enforced by the trial court, where the State asserted at sentencing that said waivers should block Appellant's appeal.

Applicable caselaw

In *Ex parte De Leon*, 400 S.W.3d 83 (Tex. Crim. App. 2013), this Court held that a "trial court's subsequent handwritten permission to appeal controlled over the appellant's previous written waiver of the right to appeal." *Id.* at 89. In deciding to allow the appellant to appeal despite the boilerplate waiver, the Court

reasoned that the trial court was in the best position “to determine whether the previously executed waiver of appeal was validly executed and if there was any merit in the appellant’s desire to appeal.” *Id.* at 89. In this regard, the Court noted that “[n]either counsel nor the State objected to this or even mentioned a waiver of appeal in the agreements. **The State had an opportunity to hold Applicant to the pre-printed waiver of appeal in the agreements, but it failed to do so at the plea hearing.**” *Id.* at 90. (emphasis added).

In *Alzarka v. State*, 90 S.W.3d 321 (Tex. Crim. App. 2002), Appellant signed a plea form which included a waiver of the right of appeal. *Id.* at 322. With the trial court’s permission, the appellant appealed. *Id.* The court of appeals dismissed the appeal because the written pretrial waiver was valid and enforceable. *Id.* On review, this Court held that the appellant did not waive her right to appeal – where the appellant’s counsel stated to the trial court “Of course we’re going to appeal this...,” and where the “trial court responded ‘Yes, all of that is true and you have my permission to do that.’ **The district attorney did not object to the interpretation of the plea agreement or dispute any element of that discussion.**” *Id.* at 323. (emphasis added). Ultimately, the Court found that “**it is clear that** appellant’s attorney, **the district attorney**, and the trial court **intended for appellant to have the right to appeal**, that such was a term of the plea agreement, and that the inclusion of, or failure to cross out, the language about

waiving appeal in the plea forms was an oversight.” *Id.* at 323–24. (emphasis added).

In *Thomas v. State*, 408 S.W3d 877 (Tex. Crim. App. 2013), this Court again noted that the State did not assert any claim that the boilerplate waiver should block the appellant’s appeal:

In its brief on discretionary review and during oral argument, the State points to the appellant's boilerplate waiver of appeal as some evidence that, when the appellant announced “no objection” to the evidence at the punishment hearing, she in fact intended to abandon appellate review of the adverse ruling on her motion to suppress. We disagree that, on the facts of this case, the boilerplate waiver supports a reasonable inference that the appellant intended, or that the trial court thought she intended, to abandon her motion to suppress claim. **In *Willis v. State*, the defendant signed a similar boilerplate waiver of appeal as part of a negotiated plea bargain, but he nevertheless filed a notice of appeal pursuant to the trial court's subsequent permission to do so. The State failed to assert any claim on appeal that Willis's boilerplate waiver should block his appeal. On those facts, we found that “the language waiving appeal in the plea forms was an oversight.”** Observing that “the trial court is in a better position to determine whether the previously executed waiver of appeal was in fact validly executed[,]” we held that “the trial court's subsequent handwritten permission to appeal controls over a defendant's previous waiver of the right to appeal, allowing the defendant to appeal despite the boilerplate waiver.” Accordingly, we remanded the cause for consideration of the merits of Willis's pretrial motion to suppress.

The record in the instant case presents even less compelling facts than those in *Willis* to justify the conclusion that, by signing the boilerplate waiver of appeal, the appellant manifested any genuine intention to abandon her pretrial suppression claim. Unlike the defendant in *Willis*, the appellant here did not even plead guilty as part of a negotiated plea bargain. She gained nothing in the way of a

favorable punishment recommendation by abandoning her right to appeal. What is more, she conspicuously failed to sign the separate dedicated waiver of appeal. Waiver of appeal was not among the matters that the trial court orally reviewed with her during the course of the plea colloquy. **Neither party objected later when the trial court admonished the appellant at the conclusion of the punishment portion of the proceedings that, in light of the non-negotiated status of her guilty plea, she would be allowed to appeal any matter *including* the adverse ruling on her motion to suppress.** And, as in *Willis*, the State neglected to argue to the court of appeals specifically that the appellant's signature on the boilerplate waiver of appeal operated to deprive her of her right to appeal. Under these circumstances, we do not regard the appellant's signature on the boilerplate waiver of appeal to be **anything other than inadvertent—an “oversight”**—and certainly less than a knowing and voluntary waiver. **It obviously did not mislead the trial court into believing that the appellant intended to waive her right to appeal** ^[7], much less that she meant to forfeit the particular complaint she took pains to litigate in her pretrial motion to suppress.

Thomas v. State, 408 S.W.3d at 886–87 (footnotes omitted) (emphasis added).

Discussion

Appellant argues that his boilerplate waivers of appeal should not be enforced. (Appellant's brief, p. 27).

A valid waiver of the right to appeal will prevent a defendant from appealing without the consent of the trial court. TEX. CODE CRIM. PROC. art. 1.14(a); *Monreal v. State*, 99 S.W.3d 615, 617 (Tex. Crim. App. 2003). When a defendant waives his right of appeal as part of an agreement on sentencing and the agreement

⁷ In his brief, Appellant acknowledges that the trial “court advised that it believed defense counsel had ‘pulled a fast one on the Court.’ (3RR7)” (Appellant's brief, p. 7 fn. 2). As in *Thomas*, this would mean that the trial court believed that the boilerplate waivers of appeal misled it into believing that Appellant intended to waive his right of appeal.

is followed by the court, his waiver is made knowingly, intelligently, and voluntarily. *See Ex parte Delaney*, 207 S.W.3d 794, 798–99 (Tex. Crim. App. 2006); *also see Marsh v. State*, 444 S.W.3d 654, 660 (Tex. Crim. App. 2014) (“Rule 25.2(a)(2)(A) does, in fact, grant defendants who plead guilty as part of a plea bargain the right to appeal pretrial motions. What Appellant fails to recognize, however, is that a defendant may waive this right, as long as the waiver is made ‘voluntarily, knowingly, and intelligently.’”).⁸

This Court has noted that “the trial court is in a better position to determine whether the previously executed waiver of appeal was in fact validly executed and if there is any arguable merit in appellant’s desire to appeal.” *Willis v. State*, 121 S.W.3d 400, 403 (Tex. Crim. App. 2003). Here, the State objected, during sentencing, to Appellant’s assertion that he would appeal. (*See* Appellant’s Brief, Appendix-Tab 2, p. 7-9). Moreover, the State held Appellant to the pre-printed waiver of appeal, where the trial court reviewed the *Defendant’s Plea of Guilty, Waiver, Stipulation and Judicial Confession*⁹, after the State objected, and found

8 Appellant argues that the waivers were not bargained for. (Appellant’s brief, p. 28). As in *Marsh*, “[w]hat Appellant fails to recognize, however, is that a defendant may waive this right, as long as the waiver is made ‘voluntarily, knowingly, and intelligently.’” *Id.* at 660.

9 “I need to see the warnings forms, State’s Exhibit 1...” *See* Appellant’s Brief, Appendix-Tab 2, p. 10. Again, State’s Exhibit 1 at the plea hearing is the *Defendant’s Plea of Guilty, Waiver, Stipulation and Judicial Confession*. (*See* CR 129, 133: bottom right corner “State’s Exhibit 1.”).

that “[n]othing’s struck out on this form.” (See Appellant’s Brief, Appendix-Tab 2, p. 10).¹⁰ Thereafter, the trial court held, in its amended *Trial Court’s Certification of Defendant’s Right of Appeal* that “this criminal case is a plea bargain case and matters were raised by written motion filed and ruled on before trial but those matters were waived at the plea hearing....” (CR 149). Finally, the State also argued to the court of appeals, in its response to Appellant’s motion for rehearing, that Appellant’s signature on the boilerplate waiver of appeal operated to deprive him of his right to appeal.

In sum, the State objected to Appellant’s notice of appeal, both at time of sentencing and on appeal, and held Appellant to the pre-printed waiver of appeal in the *Defendant’s Plea of Guilty, Waiver, Stipulation and Judicial Confession* form. See *De Leon, Alzarka and Thomas, supra*. Thus, Appellant knowingly, intelligently, and voluntarily waived appeal as part of a negotiated plea bargain agreement, and the trial court properly certified that Appellant had validly waived his right to appeal. (CR 149). Consequently, the court of appeals also properly dismissed the appeal for want of jurisdiction, based on the trial court’s amended certificate of right to appeal, which certified that Appellant had waived his right of appeal. TEX. R. APP. P. 25.2(d).

¹⁰ Appellant concedes that the trial court “observed that Mr. Lackey’s trial counsel had not struck any waivers. (2RR10).” (Appellant’s brief, p. 6).

PRAYER

Wherefore, the State prays that the Court affirm the decision of the court of appeals.

Respectfully submitted,

JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS

/s/ Douglas Howell, III
Assistant District Attorney
300 E. 26th Street, Suite 310
Bryan, Texas 77803
State Bar Number 10098100
(979) 361-4320
Fax: (979) 361-4368
dhowell@brazoscountytexas.gov

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the State's Brief was emailed to E. Alan Bennett, Attorney for Appellant, at abennett@slm.law.

/s/ Douglas Howell, III

Douglas Howell, III

CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

I certify that the foregoing document has a word count of 3042 based on the word count program of Word 2010.

/s/ Douglas Howell, III

Appendix

Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession.
(CR 129-136).

CAUSE NO. 13-04695-CRF (Count 2)

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS

§

BRAZOS COUNTY, TEXAS

Kelsey Lackey

§

272 JUDICIAL DISTRICT

DEFENDANT'S PLEA OF GUILTY, WAIVER,
STIPULATION AND JUDICIAL CONFESSION

Now comes the Defendant in open Court in the above numbered and entitled cause represented by his/her attorney with whom he/she has previously consulted and makes the following voluntary statement:

1. That I am sane and that I understand the nature of the charges contained in the indictment/information in this cause, and believe that I am competent to stand trial.
2. That I have the right to a trial by jury whether I plead "guilty," "not guilty," or "no contest."
3. That I have the right to remain silent but if I choose not to remain silent, anything I say can be used against me.
4. That I have a right to be confronted by the witnesses against me whether I have a trial in front of the Judge alone or in front of a jury.
5. I further acknowledge and understand the following admonitions which have been explained to me by the Judge and by my defense attorney before entering an oral plea of guilty or nolo contendere:

That I am charged with a felony of the 1st degree /

Class A misdemeanor / Class B misdemeanor which has a punishment range as enhanced (if any) of:

☒ a) First Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than five (5) years or more than ninety-nine (99) years or life and a fine not to exceed \$10,000.00.

☐ b) Second Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than two (2) years or more than twenty (20) years and a fine not to exceed \$10,000.00.

☐ c) Third Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than two (2) years or more than ten (10) years and a fine not to exceed \$10,000.00.

☐ d) State Jail Felony - by confinement in the State Jail Facility for a period of not less than 180 days or more than two (2) years and a fine not to exceed \$10,000.00.

☐ e) State Jail Felony with misdemeanor punishment: Pursuant to Sec. 12.44(a) of the Texas Penal Code, state jail felony conviction punished as a Class A Misdemeanor is punishable by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement (This is still a felony conviction).

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At 9:24 o'clock — M
JAN 09 2017

State's Exhibit 1

_____ f) First Degree W/One Enhancement – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than fifteen (15) years or more than ninety-nine (99) years or life and a fine not to exceed \$10,000.00.

_____ g) Habitual – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than twenty-five (25) years or more than ninety-nine (99) years or life.

_____ h) State Jail Felony reduced to Class A Misdemeanor under Texas Penal Code Section 12.44 (b): by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement.

_____ i) Class A Misdemeanor: by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement.

_____ j) Class B Misdemeanor: by confinement in jail for a period not to exceed 180 days; by fine not to exceed \$2,000; or by both such fine and confinement.

_____ k) Other - _____

I further understand that any recommendation of the prosecuting attorney as to punishment is not binding on the Judge, and that where there is a plea bargain agreement and the punishment assessed by the Judge does not exceed the agreed recommendation, I do not have the right to appeal without permission of the Judge except for those matters raised by written motions filed before trial.

I understand that if I am not a citizen of the United States that my plea may result in deportation, the exclusion of admission to this country, or denial of naturalization under federal law. There have been no promises made to me by my defense attorney, the prosecutor or the Judge concerning my stay in the United States.

Special Admonitions

_____ 1) Deferred Adjudication

I understand the consequences of being placed on Deferred Adjudication probation. I also understand that if the Court defers an adjudication of guilt and places me on community supervision, I may have the right to petition the Court for an order of non-disclosure after successfully completing community supervision, unless I am ineligible due to the nature of this offense or my criminal history.

_____ 2) Sex Offenders

- a. I understand that I am being convicted of or placed on deferred adjudication for an offense which requires me to register as a sex offender and that I will be required to meet the requirements of Chapter 62 of the Texas Code of Criminal Procedure.
- b. My attorney has advised me regarding the registration requirements under Chapter 62 of the Texas Code of Criminal Procedure.
- c. My attorney and I have reviewed the document entitled "Supplemental Admonishments for Sex Offender Registration Requirements." I understand the contents of that document and signed it freely and voluntarily.

_____ 3) Convictions for Family Violence

I understand that it is unlawful for me to possess or transfer a firearm or ammunition if I

have been convicted of a misdemeanor involving family violence as defined by Section 71.004, Family Code.

I desire to WAIVE and do voluntarily, knowingly and intelligently waive the following rights:

1. Waive the reading of the indictment.
2. Waive the right to be served with a copy of the indictment/information in the cause ten days before trial.
3. Waive the right to be arraigned.
4. Waive the right to trial by jury and request the consent and approval of the Judge and of the attorney for the State to such waiver.
5. Waive the right to remain silent and state that it is my desire to take the witness stand, knowing anything I may say can be used against me, and make a judicial confession of my guilt.
6. Waive the right to be confronted with the witnesses against me and request the approval of the Judge to the stipulation of the evidence by waiving the appearance, confrontation and cross examination of witnesses, and by my further consenting to the introduction of testimony and evidence by stipulation into the record by the attorney for the State, by oral stipulation, or by written statements of witnesses and any other documentary evidence.
7. Waive service of the indictment/information and the two-day waiting period for arraignment; and I also waive the ten day period for preparation after appointment of counsel and the ten day period in which to file written pleadings after arrest.
8. Waive the right to pre-sentence report and request that none be made.

I do further admit and judicially confess that I unlawfully committed the acts alleged in the indictment/information in this cause at the time and place and in the manner alleged, *or as a lesser included offense of the offense charged in the indictment/information*, and that such allegations are true and correct, and that I am in fact GUILTY of the offense alleged *or as a lesser included offense*.

I voluntarily enter my plea of GUILTY to said offense, and my plea is not influenced by any considerations of fear or any persuasion or any promises of any kind. In making my plea of guilty, I am not relying on any agreement not made known to the Judge at this time. I am pleading guilty because I am guilty and for no other reason.

I further understand that if I am convicted I have the right to pursue a motion for new trial and appeal to the appropriate Court of Appeals of Texas, and the right to be represented on appeal by an attorney of my choice or if I am too poor to pay for such attorney or the record on appeal, the Judge will, without expense to me, provide an attorney and a proper record for such motion for new trial and appeal. However, it is my desire to waive my right to *pursue a motion for new trial* and to appeal, and I hereby voluntarily, knowingly and intelligently waive those rights in the event that the Judge accepts the plea bargain agreement. I understand that if the Judge accepts the plea bargain agreement, I may appeal only with permission of the court.

I further understand that the State of Texas intends to destroy, and will destroy, any and all evidence in this case that is in the possession of the State of Texas, any clerk, law enforcement agency, or any other person or entity possessing said evidence. *I understand that destruction of such evidence will prevent any future request for additional testing or the presentation of new evidence or defenses or a claim of innocence based on such evidence. I hereby waive my right to request additional testing or present new*

evidence or defenses or a claim of innocence based on such evidence and consent to the destruction of any evidence seized in connection with my arrest and prosecution in this cause.

Defendant's waiver/consent: K2; Defense Attorney's waiver/consent: ay

I further understand the admonitions of the Court, and I am aware of the consequences of my plea.

[Signature]
Defendant

I have consulted with the defendant; advised him of his rights; believe him to be mentally competent and able to assist me in the preparation of the defense; and approve his signing of this plea of guilty, waiver of jury, agreement to stipulate testimony, and judicial confession.

I believe the defendant fully understands the admonitions of the Court and is aware of the consequences of his plea. The defendant in making his plea is not relying on any agreement or promise not made known to the Court at this time.

Signed this 19th day of August, 2016

[Signature]
Attorney for the Defendant

Before the entry of the defendant's plea of guilty herein, the above waivers and stipulations are hereby consented to and approved by me, the attorney representing the State.

Signed this 19th day of August, 2016.

[Signature]
Attorney for the State

It clearly appearing to the Court that the defendant is mentally competent and is represented by competent counsel and that said defendant understands the nature of the charge against him/her; that he/she has been admonished by the Court including the minimum and maximum punishment provided by law and that the defendant fully understands the admonitions of the Court and is fully aware of the consequences of his/her plea; that the attorney for the defendant and the State consent and approve the waiver of a trial by jury and agree to stipulate the testimony in this case; that the defendant understands the consequences of *waiving his right to pursue a motion for new trial and appeal* and that he/she has voluntarily, knowingly and intelligently waived those rights in the event that the Court accepts the plea bargain agreement. The Court therefore finds such plea of guilty, waivers and consent to be voluntarily, knowingly and intelligently made, and the Court accepts the plea of guilty and approves the foregoing waiver of a jury, the consent to stipulate testimony, *the waiver of right to request additional testing or to present new evidence or defenses or a claim of innocence based on such evidence and the consent to destroy evidence.*

Signed this 19 day of Dec, 2016.

[Signature]
Presiding Judge

CAUSE NO. 13-04695-ARF Count One

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

VS

§

BRAZOS COUNTY, TEXAS

Kelsey Lackey

§

272nd JUDICIAL DISTRICT

DEFENDANT'S PLEA OF GUILTY, WAIVER,
STIPULATION AND JUDICIAL CONFESSION

Now comes the Defendant in open Court in the above numbered and entitled cause represented by his/her attorney with whom he/she has previously consulted and makes the following voluntary statement:

1. That I am sane and that I understand the nature of the charges contained in the indictment/ information in this cause, and believe that I am competent to stand trial.
2. That I have the right to a trial by jury whether I plead "guilty," "not guilty," or "no contest."
3. That I have the right to remain silent but if I choose not to remain silent, anything I say can be used against me.
4. That I have a right to be confronted by the witnesses against me whether I have a trial in front of the Judge alone or in front of a jury.
5. I further acknowledge and understand the following admonitions which have been explained to me by the Judge and by my defense attorney before entering an oral plea of guilty or nolo contendere:

That I am charged with a felony of the 2nd degree /

Class A misdemeanor / Class B misdemeanor which has a punishment range *as enhanced (if any)* of:

 a) First Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than five (5) years or more than ninety-nine (99) years or life and a fine not to exceed \$10,000.00.

☒ b) Second Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than two (2) years or more than twenty (20) years and a fine not to exceed \$10,000.00.

 c) Third Degree – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than two (2) years or more than ten (10) years and a fine not to exceed \$10,000.00.

 d) State Jail Felony - by confinement in the State Jail Facility for a period of not less than 180 days or more than two (2) years and a fine not to exceed \$10,000.00.

 e) State Jail Felony with misdemeanor punishment: Pursuant to Sec. 12.44(a) of the Texas Penal Code, state jail felony conviction punished as a Class A Misdemeanor is punishable by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement (This is still a felony conviction).

At 9:14 o'clock 5 M

JAN 09 2017

State's Exhibit 1

1

MARC HAMLIN, DIST CLERK
BRAZOS COUNTY, TEXAS
BY Deputy

_____ f) First Degree W/One Enhancement – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than fifteen (15) years or more than ninety-nine (99) years or life and a fine not to exceed \$10,000.00.

_____ g) Habitual – by confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of not less than twenty-five (25) years or more than ninety-nine (99) years or life.

_____ h) State Jail Felony reduced to Class A Misdemeanor under Texas Penal Code Section 12.44 (b): by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement.

_____ i) Class A Misdemeanor: by confinement in jail for a period not to exceed one year; by fine not to exceed \$4,000; or by both such fine and confinement.

_____ j) Class B Misdemeanor: by confinement in jail for a period not to exceed 180 days; by fine not to exceed \$2,000; or by both such fine and confinement.

_____ k) Other - _____

I further understand that any recommendation of the prosecuting attorney as to punishment is not binding on the Judge, and that where there is a plea bargain agreement and the punishment assessed by the Judge does not exceed the agreed recommendation, I do not have the right to appeal without permission of the Judge except for those matters raised by written motions filed before trial.

I understand that if I am not a citizen of the United States that my plea may result in deportation, the exclusion of admission to this country, or denial of naturalization under federal law. There have been no promises made to me by my defense attorney, the prosecutor or the Judge concerning my stay in the United States.

Special Admonitions

_____ 1) Deferred Adjudication

I understand the consequences of being placed on Deferred Adjudication probation. *I also understand that if the Court defers an adjudication of guilt and places me on community supervision, I may have the right to petition the Court for an order of non-disclosure after successfully completing community supervision, unless I am ineligible due to the nature of this offense or my criminal history.*

_____ 2) Sex Offenders

- a. I understand that I am being convicted of or placed on deferred adjudication for an offense which requires me to register as a sex offender and that I will be required to meet the requirements of Chapter 62 of the Texas Code of Criminal Procedure.
- b. My attorney has advised me regarding the registration requirements under Chapter 62 of the Texas Code of Criminal Procedure.
- c. My attorney and I have reviewed the document entitled "Supplemental Admonishments for Sex Offender Registration Requirements." I understand the contents of that document and signed it freely and voluntarily.

_____ 3) Convictions for Family Violence

I understand that it is unlawful for me to possess or transfer a firearm or ammunition if I

have been convicted of a misdemeanor involving family violence as defined by Section 71.004, Family Code.

I desire to WAIVE and do voluntarily, knowingly and intelligently waive the following rights:

1. Waive the reading of the indictment.
2. Waive the right to be served with a copy of the indictment/information in the cause ten days before trial.
3. Waive the right to be arraigned.
4. Waive the right to trial by jury and request the consent and approval of the Judge and of the attorney for the State to such waiver.
5. Waive the right to remain silent and state that it is my desire to take the witness stand, knowing anything I may say can be used against me, and make a judicial confession of my guilt.
6. Waive the right to be confronted with the witnesses against me and request the approval of the Judge to the stipulation of the evidence by waiving the appearance, confrontation and cross examination of witnesses, and by my further consenting to the introduction of testimony and evidence by stipulation into the record by the attorney for the State, by oral stipulation, or by written statements of witnesses and any other documentary evidence.
7. Waive service of the indictment/information and the two-day waiting period for arraignment; and I also waive the ten day period for preparation after appointment of counsel and the ten day period in which to file written pleadings after arrest.
8. Waive the right to pre-sentence report and request that none be made.

I do further admit and judicially confess that I unlawfully committed the acts alleged in the indictment/information in this cause at the time and place and in the manner alleged, *or as a lesser included offense of the offense charged in the indictment/information*, and that such allegations are true and correct, and that I am in fact GUILTY of the offense alleged *or as a lesser included offense*.

I voluntarily enter my plea of GUILTY to said offense, and my plea is not influenced by any considerations of fear or any persuasion or any promises of any kind. In making my plea of guilty, I am not relying on any agreement not made known to the Judge at this time. I am pleading guilty because I am guilty and for no other reason.

I further understand that if I am convicted I have the right to pursue a motion for new trial and appeal to the appropriate Court of Appeals of Texas, and the right to be represented on appeal by an attorney of my choice or if I am too poor to pay for such attorney or the record on appeal, the Judge will, without expense to me, provide an attorney and a proper record for such motion for new trial and appeal. However, it is my desire to waive my right to *pursue a motion for new trial* and to appeal, and I hereby voluntarily, knowingly and intelligently waive those rights in the event that the Judge accepts the plea bargain agreement. I understand that if the Judge accepts the plea bargain agreement, I may appeal only with permission of the court.

I further understand that the State of Texas intends to destroy, and will destroy, any and all evidence in this case that is in the possession of the State of Texas, any clerk, law enforcement agency, or any other person or entity possessing said evidence. *I understand that destruction of such evidence will prevent any future request for additional testing or the presentation of new evidence or defenses or a claim of innocence based on such evidence. I hereby waive my right to request additional testing or present new*

evidence or defenses or a claim of innocence based on such evidence and consent to the destruction of any evidence seized in connection with my arrest and prosecution in this cause.

Defendant's waiver/consent: KL; Defense Attorney's waiver/consent: [Signature]

I further understand the admonitions of the Court, and I am aware of the consequences of my plea.

[Signature]
Defendant

I have consulted with the defendant; advised him of his rights; believe him to be mentally competent and able to assist me in the preparation of the defense; and approve his signing of this plea of guilty, waiver of jury, agreement to stipulate testimony, and judicial confession.

I believe the defendant fully understands the admonitions of the Court and is aware of the consequences of his plea. The defendant in making his plea is not relying on any agreement or promise not made known to the Court at this time.

Signed this 22 day of August, 2016.

[Signature]
Attorney for the Defendant

Before the entry of the defendant's plea of guilty herein, the above waivers and stipulations are hereby consented to and approved by me, the attorney representing the State.

Signed this 19th day of August, 2016.

[Signature]
Attorney for the State

It clearly appearing to the Court that the defendant is mentally competent and is represented by competent counsel and that said defendant understands the nature of the charge against him/her; that he/she has been admonished by the Court including the minimum and maximum punishment provided by law and that the defendant fully understands the admonitions of the Court and is fully aware of the consequences of his/her plea; that the attorney for the defendant and the State consent and approve the waiver of a trial by jury and agree to stipulate the testimony in this case; that the defendant understands the consequences of *waiving his right to pursue a motion for new trial and appeal* and that he/she has voluntarily, knowingly and intelligently waived those rights in the event that the Court accepts the plea bargain agreement. The Court therefore finds such plea of guilty, waivers and consent to be voluntarily, knowingly and intelligently made, and the Court accepts the plea of guilty and approves the foregoing waiver of a jury, the consent to stipulate testimony, *the waiver of right to request additional testing or to present new evidence or defenses or a claim of innocence based on such evidence and the consent to destroy evidence.*

Signed this 6 day of Jan, 2016.

[Signature]
Presiding Judge